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RUEHMN/AMEMBASSY MONTEVIDEO 6303
RUEHQT/AMEMBASSY QUITO 7265
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C O N F I D E N T I A L LA PAZ 000758

SIPDIS

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TAGS: PGOV PREL KDEM PHUM PINR ENVR ASEC BL

SUBJECT: GOB TO SEIZE "TERRORIST" ASSETS WITHOUT TRIAL

REF: A. LA PAZ 715
 1B. LA PAZ 635
 1C. 08 LA PAZ 2464

Classified By: A/EcoPol Chief Joe Relk for reasons 1.4 (b, d)

11. (C) Summary: President Morales issued a supreme decree on May 20 authorizing government prosecutors to seize, without trial, assets related to alleged terrorist acts, including personal goods, business assets, bank accounts, and communications media. The decree is to be applied retroactively. Opposition members, human rights groups, and legal experts uniformly criticized the decree as illegal and a violation of the constitution. With the resignation May 26 of the last member of the Constitutional Tribunal, there is no way to challenge the decree's constitutionality or other constitutionally-questionable actions by the Morales administration. Members of the political opposition believe the decree will be used to silence dissent. End summary.

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An Ounce of Prevention
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12. (U) Calling it a "preventative measure" necessary to safeguard the country, President Evo Morales on May 20 issued Supreme Decree 138 allowing the seizure of assets from persons and businesses suspected of committing or abetting acts related to terrorism, sedition, or armed revolt. Similar to the U.S. search warrant process, a government prosecutor would bring evidence of suspicion to a judge, who would approve the seizure before a trial. The decree permits the government to hold assets prior to conviction of any crime and regardless of whether the assets are connected to the suspected offense. According to the Morales administration, the decree will be applied retroactively to address the alleged April 16 terrorism events in Santa Cruz (reftel B).

13. (U) Discussing the decree on May 20, President Morales specified that he would also seize private media assets if they were suspected of supporting actions deemed "separatist." Bernardo Calas, president of the Federation of Communication Media, said "It's apparent they are imitating some of the policies taken in Venezuela. It is worrisome how

they have started a systematic pressuring of the media and businesses, which is indicative of a totalitarian government."

¶14. (U) Responding to criticisms that the supreme decree circumvents judicial review, President Morales justified the decree by saying: "The judicial branch ('poder judicial') instead of implementing justice has become a force for harm ('poder perjudicial'). It is impossible that some judges would pardon people who wanted to divide Bolivia. If we find any person, businessman financing these separatist acts, they should be punished, and with your support they really will be punished by seizing their assets."

Decree Violates Host of Laws

¶15. (U) Legal experts and human rights advocates roundly criticized the decree on several grounds. Edwin Rojas, president of the Bolivian Lawyers Guild, said the decree violates at least four articles of the new constitution promulgated under Morales' watch (viz. Articles 114, 116, 118, 120). Constitutional expert Willman Duran noted the government was "usurping" the role of the legislature, which according to the constitution is the sole body that "may create norms related to criminal sanctions." According to Article 109 of the constitution, "rights and guarantees may only be regulated by law." Article 116 establishes a presumption of innocence and that legal sanctions should be founded in laws established before the offending act (i.e. laws should not be retroactive).

¶16. (U) Human rights experts noted that the decree violates Article 17 of the Universal Declaration of Human Rights regarding arbitrary deprivation of property. Supreme Court Justice Rosario Canedo and constitutional expert Carlos Alarcon each said the retroactive nature of the decree could lead to its appeal in the Inter-American Court of Human Rights.

Courts Defunct, No Legal Recourse

¶17. (U) While Morales' decree could normally be appealed to the country's Constitutional Tribunal or possibly the Supreme Court, both are essentially defunct. The sole remaining member of the normally ten-member Constitutional Tribunal, Silvia Salame, announced her resignation May 26. Upon resigning, Salame said, &rule of law does not exist in this country.⁸ Similarly, with a government-sponsored lawsuit pending against Supreme Court President Eddy Fernandez, it has only seven out of twelve possible members, with eight being required for a quorum.

¶18. (C) President Morales and his ruling Movement Toward Socialism party (MAS) have consistently targeted the Constitutional Tribunal, which is Bolivia's highest court on constitutional matters, since the party came to power in January 2006. The MAS used a campaign of intimidation, salary cuts, and similar impeachment proceedings to effectively deactivate the Tribunal (reftel A, C), which now has a backlog of over 4,000 cases (or approximately four years of work). Morales and the government are now taking a similar tack against the Supreme Court, with cases pending against five members.

¶19. (U) In related news, Morales announced May 26 after delivering over 1200 acres of land to supporters that he would continue with land seizures and redistribution. The government has accelerated its assessments of which lands lack "social function," and is now seizing land to be awarded to its "rightful owners." Opposition members have complained that with the lack of a functioning judiciary there can be no appeal of the government's actions.

Comment

¶10. (C) President Morales seems to be pushing the envelope of what can be accomplished via supreme decree and ignoring Congressional and judicial authority. Given the decree's broad scope and the likely ease with which government prosecutors can establish a degree of "suspicion," Cruceno opposition members are bracing for crippling seizures of their personal and business assets. Opposition contacts are fearful the legal procedure for defining "suspicion of a terrorist act" will be politicized and conducted by pro-government prosecutors and judges. Given dubious arrests over the past year, we find these concerns valid. End comment.

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